

**BEFORE THE COMMISSION
ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**

PARK OVERLOOK HOMEOWNERS)	
ASSOCIATION, INC.)	
)	
Complainant)	
)	
vs.)	Case No. 554-G
)	
MARY BARRICK)	
)	
Respondent)	
)	

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(I), 10B9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this 27th day of March, 2003, found, determined and ordered as follows:

BACKGROUND

Mary Barrick is a homeowner in the Park Overlook Homeowners Association, Inc. The Park Overlook Homeowners Association, Inc. is a homeowner's association located in Derwood, Maryland. The community is governed by Articles of Incorporation, Bylaws, and a Declaration of Covenants, Conditions and Restrictions. Article VII of the Declaration of Covenants, Conditions and Restrictions requires that homeowners maintain their property "in a manner satisfactory to the Board of Directors."

Ms. Barrick did not maintain her home "in a manner satisfactory to the Board of Directors" and the Board of Directors notified her of the problems with her house by letter dated February 23, 2001. Case File at 4. The letter informed Ms. Barrick that she needed to repair the rotted wood, repair the siding and repaint all painted areas on her house. Ms. Barrick responded on March 15, 2001. Case File at 6. In her response, she acknowledged the need to repair her house and indicated that it would be accomplished by the summer because she was planning to

sell the house. On May 15, 2001, Park Overlook sent a second notice to Ms. Barrick indicating that the repairs had not yet been done. Case File at 7.

On June, 29, 2001, the Association notified Ms. Barrick that because she had not performed the repairs, the Board of Directors would conduct a hearing on July 10, 2001, to address the matter. Case File at 8. On July 24, 2002, Ms. Barrick was notified by letter that the hearing determined that she “[f]ailed to complete exterior maintenance,” and the Board ordered her to have the repairs completed before August 3, 2001. Case File at 9.

On January 11, 2002, Park Overlook filed a complaint with the Commission on Common Ownership Communities alleging that Ms. Barrick failed to properly maintain her house requesting that the Commission order her to complete the repairs. On January 22, 2002, the Commission notified Ms. Barrick, by letter, that a complaint had been filed against her and requested a written response. Case File at 79. On April 11, 2002, the Commission sent Ms. Barrick a second notice, this time by certified mail, indicating that no response had been received and again requesting an answer. Case File at 80. On April 22, 2002, a member of the Commission staff talked to Ms. Barrick and on May 5, 2002, the Commission wrote a third letter requesting an answer to the complaint. Case File at 81. This letter also notified Ms. Barrick that the Montgomery County Code, Section 10B-13(d), authorizes the award of “costs, including reasonable attorney’s fees” if a party “substantially delayed or hindered the dispute resolution process without good cause.” Case File at 82.

On May 17, 2002, Ms. Barrick finally responded. In her response she admitted that she “ha[d] not been responsive. She “also agree[d] that repair work is needed,” and that she would have the work finished within 90 days. Finally, she agreed “to pay any legal fees incurred by the association.” Case File at 83. Park Overlook re-inspected Ms. Barrick’s home on or about August 19, 2002, finding that the repairs had not been made. On September 4, 2002, the Commission accepted jurisdiction of the case. On January 15, 2003, a panel of the Commission conducted a hearing. Ms. Barrick’s opening statement was an admission that her house was in need of repair and an agreement to complete the repairs within 90 days. Ms. Barrick also agreed to pay cost and attorney’s fees.

FINDINGS OF FACT

1. Mary K. Barrick is a homeowner residing at 7719 Iron Forge Court, Derwood, MD 20855. This residence is located within the Park Overlook Homeowners Association Inc.

2. The Park Overlook Homeowners Association Inc. is a homeowner's association located in Derwood, MD. The community is governed by Articles of Incorporation, Bylaws, and a Declaration of Covenants, Conditions and Restrictions.
3. Ms. Barrick admits that her residence needs repair.
4. Ms. Barrick's recalcitrance in responding to the Association's requests and the Commission's notices significantly delayed the resolution of this dispute.

CONCLUSIONS OF LAW

1. The Park Overlook Homeowners Association Inc. Articles of Incorporation, Bylaws, and Declaration of Covenants, Conditions and Restrictions are valid and enforceable documents. Markey, et al. v. Wolf, et al., 607 A.2d 82, 87 (Md. 1992).
2. The Montgomery County Code, Section 10B-13(d), allows the award of costs, including reasonable attorney's fees to one party if another party substantially delays the resolution of the dispute. The hearing panel may also require the losing party to pay the filing fee.

DISCUSSION

Ms. Barrick admitted that her house was in need of repair and offered no reason why she allowed this dispute to drag on long beyond the time it should have been resolved. Therefore, this panel has no choice but to order her to complete the repairs in a timely manner.

The Association requested reimbursement of its costs. It indicated that counsel for the Association expended five hours of time at a rate of \$235 per hour, for a total cost of \$1175. In addition, the Association also paid the \$50 filing fee. Because Ms. Barrick's actions, or lack thereof, unreasonably delayed the resolution of this dispute, the panel believes it is appropriate to grant the Association's request for reimbursement.

The panel was baffled by this case. There was no answer to the question posed to Ms. Barrick at the hearing: "Why are we here?" While there is no answer and the panel needs none, the lack of an answer raises concerns with the panel, which were also expressed by the Association, regarding Ms. Barrick's compliance with the order. While the panel is hesitant to

suggest that Ms. Barrick will not comply with the order, it does want to provide Ms. Barrick with another provision of the Montgomery County Code addressing this question.

In addition to any other penalty allowed by law, any person who does not comply with a final Commission order issued under this Chapter has committed a class A civil violation. Each day that a person does not comply with a Commission order is a separate offense.

Montgomery County Code, Section 10B-13(j).

ORDER

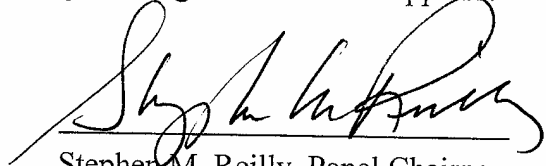
In view of the foregoing, and based on the record, for the reasons set forth above, the Commission finds:

Mary K. Barrick failed to maintain her house to a reasonable standard as required by the documents governing the Park Overlook Homeowners Association Inc. The Commission hereby orders that within 90 days from the date of this order Ms. Barrick complete all necessary repairs to the exterior of her house at 7719 Iron Forge Court, Derwood, MD. These repairs include: repairing all rotted wood on the exterior of the house, preparing and painting all previously painted exterior surfaces, removing rust over the bay window, repairing loose siding on the rear of the house, and repairing the railing on the rear deck of the house.

Furthermore, the panel finds that Ms. Barrick caused unnecessary delay to the resolution of this dispute and orders her to pay, within 30 days from the date of this order, the amount of \$1225.00 for fees and costs.

The foregoing was concurred in by panel members Bruce, Maloney and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal with the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of the Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

A handwritten signature in black ink, appearing to read 'Stephen M. Reilly', written over a horizontal line.

Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership
Communities